

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

HAAG ENGINEERING CO.; and ALEXIS KING

DEFENDANTS

STATE FARM'S MEMORANDUM IN SUPPORT OF ITS **UNOPPOSED
LOCAL RULE 79 MOTION FOR LEAVE TO FILE UNDER SEAL
ITS MOTION (WITH MEMORANDUM AND EXHIBITS)
TO DECLASSIFY A PORTION OF CORI RIGSBY'S DEPOSITION
FROM "PROTECTED INFORMATION" STATUS
UNDER THE 406 CONSENT PROTECTIVE ORDER
(With Good Faith Certificate)**

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Defendant/Counter-Plaintiff State Farm Fire and Casualty Company (“State Farm”) submits this Memorandum in Support of its Unopposed Local Rule 79 Motion for Leave to File Under Seal its Motion (With Memorandum and Exhibits) to Declassify a Portion of Cori Rigsby’s Deposition From “Protected Information” Status Under the [406] Consent Protective Order.

STATEMENT REGARDING NONOPPOSITION

Prior to filing this motion, State Farm conferred on this matter with the Rigsbys and Haag. (Barbour Decl. at ¶6, Ex. A to Mtn.) Without prejudice to their respective positions either opposing or supporting State Farm’s forthcoming Motion to Declassify, in whole or in part, the Rigsbys and Haag do not oppose the relief requested in this Motion, specifically: permission to file State Farm’s forthcoming Motion to Declassify, any responses thereto and associated memoranda and other related materials under seal. (Good Faith Certif., Ex. B to Mtn.)

INTRODUCTION

On Thursday, June 24, 2010 and Friday, June 25, 2010, State Farm deposed Kerri Rigsby and Cori Rigsby, respectively (collectively, the “Relators”). ([646] at 1; [647] at 1.) Subsequently, on July 27, 2010, counsel for the Relators invoked this Court’s [406] Consent Protective Order and designated certain portions of the Relators’ testimony as “Protected Information,” (July 27, 2010 E-mail from D. Sugimura, Ex. A to Mtn.), subjecting it to heavy restrictions with respect to use and disclosure. *See* ([406] Consent Prot. Order at ¶3) (describing restrictions on Protected Information).

The [406] Consent Protective Order provides that “[i]nformation shall be designated as ‘Protected Information’ only upon a good faith belief that the information is confidential, trade secret, or proprietary information and subject to protection under Rule 26 of the Federal Rules of Civil Procedure.” ([406] at ¶1.) Large portions of the testimony given by the Relators and initially designated as “Protected Information” failed to meet that standard. *See, e.g.*, Deposition of Kerri Rigsby (“*Kerri Rigsby Depo.*”) at 278:13-23; Deposition of Cori Rigsby (“*Cori Rigsby Depo.*”) at 180:6 – 183:3; 192:16-20; 197:3-21; 201:2 – 204:14; 212:20 – 213:4; and 216:20 – 218:10. After being confronted

with these deficiencies, the Relators declassified all but one portion of challenged testimony. *See* Collective Exhibit B to Mtn. Because this final portion of Cori Rigsby's testimony fails to meet the standard of the [406] Consent Protective Order, State Farm therefore invokes its right thereunder to "move the Court for an order removing the Protected Information designation" from the following portions of the Relators' deposition testimony so-designated: *Cori Rigsby Depo. at* 197:3-21. ([406] at ¶6.)

As required by the [406] Consent Protective Order, State Farm has conferred with the Relators in an attempt to resolve this matter informally. *E.g.*, (Barbour Decl. at ¶5 & Collective Ex. 2, Ex. B to Mtn.) The Relators have maintained the Protected Information designation with respect to the final portion of Cori Rigsby's testimony challenged by State Farm. (Barbour Decl. at ¶5 & Collective Ex. 2, Ex. C to Mtn.) INFORMATION REQUIRED BY UNIF. L. CIV. R. 79

I. NONCONFIDENTIAL DESCRIPTION OF WHAT IS TO BE SEALED

State Farm requests leave for the applicable filers to submit the following items under seal:

- (1) State Farm's Motion to Declassify a Portion of Cori Rigsby's Deposition From "Protected Information" Status Under the [406] Consent Protective Order, including all exhibits thereto (which will include excerpts of Cori Rigsby's deposition transcript, highlighted in yellow to identify the disputed portion that is designated as Protected Information);
- (2) All responses thereto, including concomitant exhibits;
- (3) All response memoranda; and
- (4) Any rebuttal in support of State Farm's Motion, including any concomitant exhibits.

State Farm will – of course – serve complete copies of its filings upon all Parties' counsel, by e-mail and United States Mail.

II. STATEMENT OF WHY SEALING IS NECESSARY AND WHY ANOTHER PROCEDURE WILL NOT SUFFICE

The [406] Consent Protective Order provides that "[i]nformation shall be designated as 'Protected Information' only upon a good faith belief that the information is confidential, trade secret, or proprietary information and subject to protection under Rule 26 of the Federal Rules of Civil

Procedure.” ([406] at ¶1.) Because this final portion of Cori Rigsby’s testimony fails to meet the standard of the [406] Consent Protective Order, State Farm therefore invokes its right thereunder to “move the Court for an order removing the Protected Information designation” from the following portions of the Relators’ deposition testimony so-designated: *Cori Rigsby Depo. at 197:3-21*. ([406] at ¶6.)

The [406] Consent Protective Order provides that “[i]f it is deemed necessary to bring to the attention of the Court any Protected Information, the party seeking to use the Protected Information shall first seek the Court’s permission, pursuant to Local Rule 79, to file the ...document containing such information or reference in a sealed container....” ([406] at ¶8.) Accordingly, State Farm is filing this motion, requesting permission to file its forthcoming Motion to Declassify a Portion of Cori Rigsby’s Deposition From “Protected Information” Status Under the [406] Consent Protective Order, as well as the concomitant Memorandum and all exhibits, under seal.

Fed. R. Civ. P. 7(b)(1) requires that “[a] request for a court order must be made by motion” and Miss. Unif. L. Civ. R. 79(b) requires that “[e]very document used by parties moving for or opposing an adjudication by the court ...must be filed with the court.” Therefore there is no other method by which State Farm may bring the designated testimony before the Court without violating the [406] Consent Protective Order’s prohibitions on public disclosure of Protected Information, other than by filing same under seal.

So as to reduce the Court’s burden in sifting through the entire deposition transcript at issue, State Farm will submit an excerpt of the Cori Rigsby deposition transcript to the Court under seal, with the disputed portion designated as “Protected Information” highlighted in yellow.

III. REFERENCE TO GOVERNING CASE LAW

The Fifth Circuit has affirmed a trial court’s right to place documents under seal to protect them from “public view or dissemination until such time as the ...need for confidentiality ...can be

determined....” *Sanders v. Shell Oil Co.*, 678 F.2d 614, 618 (5th Cir. 1982) (quoting record below). ““It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public,’ but Rule 26(c) permits a federal judge to override this presumption upon a showing of ‘good cause.’” *In re Enron Corp. Securities, Derivative & “ERISA” Litigation*, 229 FRD 126, 130 n. 8 (S.D. Tex. 2005) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Court Northern District (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1991) (citing *Citizens First Nat’l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir.1999); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 789 (1st Cir. 1988); and *In re Agent Orange Product Liability Litig.*, 821 F.2d 139, 145-46 (2d Cir. 1987)).

The challenged portion of Cori Rigsby’s testimony does not deserve the confidentiality protections of the [406] Consent Protective Order. However, in order to properly address the issue and seek the Court’s declassification of that testimony from Protected Information status, State Farm must brief the issue and submit said testimony under seal, in order to avoid violating the [406] Consent Protective Order. Such constitutes good cause.

IV. PROPOSED ORDER

As required by Miss. Unif. L. Civ. R. 79(e)(4)(E), State Farm will tender the Court a proposed order granting the relief it requests herein and reciting the findings required by governing case law to support the sealing.

CONCLUSION

For the foregoing reasons, the Court should grant State Farm’s motion and permit the applicable filers to file the following items under seal:

- (1) State Farm’s Motion to Declassify a Portion of Cori Rigsby’s Deposition From “Protected Information” Status Under the [406] Consent Protective Order, including all exhibits thereto (which will include excerpts of Cori Rigsby’s deposition transcript, highlighted in yellow to identify the disputed portion that is designated as Protected Information);
- (2) All responses thereto, including concomitant exhibits;
- (3) All response memoranda; and

(4) Any rebuttal in support of State Farm's Motion, including any concomitant exhibits.
This the 28th day of October, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amanda B. Barbour, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System and as further described below:

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